

REMARKS

Following entry of the above amendment, claims 1-6, 8, and 10-11 are pending. Claims 7 and 9 are canceled. Applicants amend claim 10 to focus on particular embodiments of the invention and claim 11 to add clarity to the claim. Support for the amendment is found in the specification as originally filed. See, for example, page 11, lines 11-16, and the claims as originally filed. Applicants also amend the Specification to correct an error in the US publication. Support for the amendment can be found in the specification as originally filed. See, for example, page 31, lines 2-6.

The Office Action states that claim 1 (and presumably claims 2-5, 8, and 10) is provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5, 8 and 10 of co-pending Application No. 10/499,529 since the scope of the claims of the instant application and the 10/499,529 application overlap. Applicants respectfully traverse the rejection. The Examiner states that the overlap between the '529 application and the instant application is wherein "X & Y are phenyl or heteroaromatic moieties." Applicants respectfully note that although there is overlap in the definitions of the "X" moieties, there is no overlap in the "Y" moieties, hence no overlap in the two genera. Specifically, "Y" in the '529 application is as follows:

"Y represents (i) a substituent selected from hydrogen, halogen, -CN, -C₁₋₄alkyl, -C₂₋₄alkenyl, -CF₃, -NR^aR^b, -NO₂, -N(C₁₋₄alkyl)(CHO), -NHCOC₁₋₄alkyl, -NH₂SO₂R^c, -C₀₋₄alkylOR^d, -C(O)R^c, -C(O)NR^aR^b, -S(O)_nR^c, or -S(O)₂NR^aR^b, or (ii) phenyl or a 5 or 6 membered aromatic or non-aromatic heterocyclic group containing at least one heteroatom selected from O, N or S, each of which is optionally substituted by 0-2 groups selected from: halogen, -CN, -C₁₋₄alkyl, -CF₃, -(CH₂)_nNR^aR^b, -(CH₂)_nN⁺R^aR^bCH₂CONH₂, -C₀₋₄alkylOR^d, -C(O)R^c, -C(O)NR^aR^b, -S(O)_nR^c, -S(O)₂NR^aR^b, =O, oxide to a ring N, -CHO, -NO₂, and -N(R^a)(SO₂R^c);

R^a and R^b independently represent hydrogen, -C₁₋₆alkyl, or together with the N atom to which they are bonded form a 5-, 6- or 7- membered heterocyclic ring optionally containing an additional heteroatom selected from O, N or S, optionally substituted by C₁₋₄alkyl, and optionally the S heteroatom is substituted by one or two O atoms."

However, in the instant application, "Y" is as follows:

"Y represents phenyl or a 5- or 6- membered aromatic heterocyclic group consisting of at least one heteroatom selected from O, N or S, each of which is substituted by a group $-C_{1-2}alkylNR^cR^d$.

R^c and R^d , together with the nitrogen atom to which they are bonded, form a 4-membered heterocyclic ring optionally substituted by halogen, OH or $-OC_{1-6}alkyl$, or a 5- or 6- membered non-aromatic heterocyclic ring substituted by OH, $-OC_{1-6}alkyl$ or 1 to 2 halogens, with the proviso that the substituent is not attached to a ring carbon atom adjacent to a heteroatom."

In each case, "Y" can (but not exclusively) be phenyl or 5- or 6- membered aromatic heterocyclic group. However, the instant application requires that "Y" be substituted with the group $-C_{1-2}alkylNR^cR^d$. The corresponding group in the '529 application is the optional substituent " $-(CH_2)_nNR^aR^b$ " wherein "n" is 0-2. Of significance are the definitions for the corresponding R^cR^d of the instant application and R^aR^b of the '529 application. R^cR^d of the instant application, together with the nitrogen atom to which they are bonded, form a 4-membered heterocyclic ring optionally substituted by halogen, OH or $-OC_{1-6}alkyl$, or a 5- or 6- membered non-aromatic heterocyclic ring substituted by OH, $-OC_{1-6}alkyl$ or 1 to 2 halogens, with the proviso that the substituent is not attached to a ring carbon atom adjacent to a heteroatom. R^aR^b of the '529 application does not include a 4-membered heterocyclic ring (with or without substitution), nor does it include a 5- or 6- membered non-aromatic heterocyclic ring substituted by OH, $-OC_{1-6}alkyl$ or 1 to 2 halogens. Thus, the scope of the instant application and the '529 application do not overlap. Since the Examiner did not provide any other basis for a non-statutory obviousness type double patenting rejection, Applicants respectfully request reconsideration and withdrawal of the rejection.

The Office Action states that claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants respectfully traverse the rejection. However, to further prosecution, Applicants amend claim 10. In light of

the amendment, Applicants respectfully request reconsideration and withdrawal of the rejection.

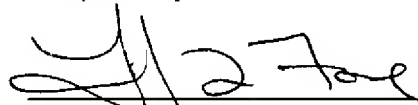
The Office Action states that claim 10 is objected to because the status identifier is incorrect. In the current listing of claims, the status identifier is correct. Applicants respectfully request withdrawal of the objection.

Applicants note that the Office Action Summary states that claim 11 is objected to and claim 6 is allowed. However, the Examiner fails to comment on the objection to claim 11, and the reason for allowance of claim 6. Applicants amend claim 11 to add clarity to the claim, and presume claim 6 is allowable in its present form.

Applicants believe that all claims are in condition for allowance and such action is respectfully requested. Applicants believe that no other fees are due in connection with the filing of this paper other than those specifically authorized herewith.

Should any other fees be deemed necessary to effect the timely filing of this paper, the Commissioner is hereby authorized to charge such fees to Deposit Account No. 07-1392. If the Examiner has any outstanding issues with the pending claims, he is encouraged to telephone the undersigned at (919) 483-6334 for expeditious handling.

Respectfully submitted,



Jennifer L. Fox
Attorney for Applicants
Registration No. 52,218

Date: 18 Dec 07
Customer No. 23347
GlaxoSmithKline
Corporate Intellectual Property
5 Moore Drive, P.O. Box 13398
Research Triangle Park, NC 27709-3398
Telephone: (919) 483-6334
Facsimile: (919) 483-7988

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